



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking to Review
Policies Concerning Intrastate Carrier
Access Charges.

Rulemaking 03-08-018
(Filed August 21, 2003)

**REPLY COMMENTS OF THE DIVISION OF RATEPAYER
ADVOCATES AND THE UTILITY REFORM NETWORK
ON PHASE III ISSUES**

Pursuant to Rule 77.6(c) of the Commission's Rules of Practice and Procedure, and the March 14, 2006 Notice of Availability, The Division of Ratepayer Advocates (DRA) and The Utility Reform Network (TURN) submit these Reply Comments on Phase III Issues. Silence on a particular issue should not be construed as agreement with the positions of any party.

I. INTRODUCTION

DRA and TURN generally support the implementation of a more efficient and uniform rate structure for all carriers, but only when doing so does not harm ratepayers. For Phase III of this proceeding, Decision.06-04-071 invites parties to address whether the intrastate access charge reform policy established in D.06-04-071, which removes the NIC and TIC elements from the intrastate access charges of the two largest incumbent local exchange carriers (ILECs) in California, should be extended to other local exchange carriers.¹

With regard to the Small LECs, because removing the NIC and TIC would result in either rate increases and/or additional draws on the California High Cost

¹ D.06-04-071 at 10-11.

Fund A (CHCF-A), DRA and TURN urge the Commission to refrain from extending these access charge reforms to the Small LECs at this time in order to avoid these and other adverse financial impacts on ratepayers. With regard to CLECs, DRA and TURN continue to urge the Commission exclude CLECs from any access charge reform, but note that capping CLECs' intrastate access charges in a manner similar to the cap on CLECs' interstate access charges may be reasonable.

II. DISCUSSION

Parties are somewhat divided on the issue of whether the proposed policy to eliminate the NIC and TIC access rate elements for AT&T and Verizon should be extended to CLECs, mid-sized LECs, and the Small LECs. For example, AT&T Communications of California and its affiliated CLECs (the AT&T-CLECs) recommend that this policy should apply equally to all local exchange carriers.² On the other hand, the Small LECs raise concerns about the financial implications of the ensuing rate rebalancing for their constituents and the California High Cost Fund-A (CHCF-A) should this proposal be adopted.³ The AT&T-CLECs and MCImetro support changes in CLEC access charges by, for example, applying a cap based on the access charges of the ILEC in whose territory the CLEC is serving the customer,⁴ while CALTEL strongly urges the Commission to refrain from changing its policies towards CLEC access charges.⁵

² Opening Comments of AT&T Communications of California, TCG Los Angeles, Inc., TCG San Diego, and TCG San Francisco on Phase III Issues (Comments of the AT&T-CLECs), May 19, 2006, at 1-2.

³ Opening Comments of the Small LECs in Response to D.06-04-071 (Comments of the Small LECs), May 19, 2006, at 6.

⁴ Comments of the AT&T-CLECs at 1-2; Opening Comments of MCImetro Access Transmission Services LLC (U-5253-C) (Comments of MCImetro), May 19, 2006, at 2-3.

⁵ Comments of the California Association of Competitive Telephone Companies on the Extension of Access Charge Policies to CLECs (Comments of CALTEL), May 19, 2006, at 2.

A. The Commission Should Avoid Rate Increases and/or Additional Draws on the CHCF-A.

While DRA and TURN generally support a policy of maximizing the efficiency of rate structures, any revenue recovery mechanism utilized to offset the removal of the NIC and TIC for the Small LECs would necessitate basic rate increases, additional draws on the CHCF-A, or a combination of the two. As noted by the Small LECs, however, since each of them has basic rates at or above the statutory maximum of 150% of Pacific Bell's (AT&T's) basic rate, the burden of replacement funding would likely fall substantially upon the CHCF-A.⁶ Inasmuch as all California ratepayers pay into the CHCF-A,⁷ increased CHCF-A draws to fund reductions in access charges to benefit interexchange carriers would negatively impact California ratepayers.

Furthermore, as the Small LECs noted, it would be imprudent for the Commission to adopt these reforms for the Small LECs in view of pending changes to intercarrier compensation (ICC) policy at the federal level that would equalize interstate and intrastate access charges:

It makes little sense for this Commission to order changes in intrastate access charges for the remaining ILECs at this time, and create an interim change when a NARUC-supported ICC proposal appears to be coming before the FCC for consideration relatively soon. Also by making a NIC or TIC change now for the small and mid-sized ILECs, the Commission will shift the revenue shortfall burden to either end users or the applicable CHCF, as opposed to any Federal Access Recovery Mechanism that may be adopted by the FCC (and which has been presented to the FCC as an option in the new ICC regime).⁸

⁶ Comments of the Small LECs at 3.

⁷ With certain limited exceptions.

⁸ *Id.* at 2.

Thus, it would make sense to refrain from changing the access charges of the Small LECs at this time and await federal ICC reforms. This could allow for recovery of any revenue shortfalls resulting from access charge reductions to be incremented against a national billing base, thereby minimizing the potential rate shock for California ratepayers.⁹ On balance, the Commission should sustain the NIC and TIC for the Small LECs in order to spare ratepayers from local rate or surcharge increases that would only benefit interexchange carriers.

B. The Proposal to Cap CLECs' Intrastate Access Charges in Accordance with the FCC's Interstate ICC Policy Has Merit.

CALTEL states that there is no need for the Commission to address CLEC access charges in this proceeding.¹⁰ DRA and TURN have similarly explained in various comments in this docket the reasons why the Commission should not address CLEC access charges. In the alternative, however, CALTEL proposes capping CLEC access charges at the rate of the serving ILEC plus 10% and lists several contingencies that should accompany the adoption of such a cap.¹¹ The AT&T-CLECs and MCImetro also propose a cap, without the additional 10% or the contingencies, as being consistent with the approach of the Federal Communications Commission (FCC).¹²

If the Commission chooses to tackle the issue of access charge reform for CLECs, DRA and TURN do not oppose capping CLEC access rates. Imposing caps on CLEC access rates at a level equal to that of the ILEC in their respective service territories seems reasonable to the extent that it promotes neutrality and consistency with FCC policy for interstate access charges. In addition, a cap is an efficient way to regulate CLEC access rates in lieu of conducting protracted costing proceedings for each CLEC that would divert valuable Commission time and

⁹ It is also worth noting that the Commission's stated intent to open an OIR on the CHCF-A

¹⁰ Comments of CALTEL at 2.

¹¹ *Id.* at 3-4.

¹² Comments of the AT&T-CLECs at 1-2; Comments of MCImetro at 3-4.

resources from other issues of greater interest to and which could provide direct benefits to ratepayers. With regard to CALTEL's proposal for a cap plus 10% that is contingent upon certain "considerations and caveats,"¹³ the contingencies appear to mostly be reasonable. DRA and TURN note, however, that it is unclear why CLECs should be allowed to charge up to 10%, an seemingly arbitrary amount, over the relevant ILEC rate.

III. CONCLUSION

In adopting access charge reforms, the Commission should ensure that its policies insulate ratepayers from unnecessary rate increases, increased CHCF-A draws, and other financial impacts resulting from changes in access charges. The Commission should leave in place the NIC and TIC rate elements for the Small LECs at this time and await comprehensive federal ICC policy reforms to minimize potentially adverse rate rebalancing impacts on ratepayers. Additionally, the

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¹³ Comments of CALTEL at 3.

Commission need not undertake access charge reform for CLECs. If it nonetheless chooses to do so, capping CLEC access charges at a level equal to those of the ILEC serving a particular area is not unreasonable and would be an administratively expedient way of dealing with CLEC access charges.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of “**REPLY COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES AND THE UTILITY REFORM NETWORK ON PHASE III ISSUES**” in **R.03-08-018** by using the following service:

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Executed on **June 9, 2006** at San Francisco, California.

/s/ REBECCA ROJO

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N O T I C E

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